

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19 CV 572 MR WCM

WILLIAM P. AVOKI,)
Plaintiff,)
v.) ORDER
ANDREW SAUL,)
Commissioner of Social Security,)
Defendant.)

)

This matter is before the Court on Plaintiff's "Motion for Judicial Notice of Failure to Answer" (the "Motion for Notice," Doc. 21).

On October 24, 2019, Plaintiff filed a "Complaint for Review of a Social Security Disability or Supplemental Security Income Decision" (the "Complaint," Doc. 1).

On February 10, 2020, the Commissioner of Social Security (the "Commissioner") filed a Motion to Dismiss asserting that Plaintiff's Complaint should be dismissed based on failure to exhaust administrative remedies (the "Motion to Dismiss," Doc. 16).

Plaintiff requested and was granted an extension through and including March 10, 2020 within which to respond to the Motion to Dismiss. Docs. 18 & 19.

On March 17, 2020, Plaintiff filed a Motion for Leave to File Amended Complaint and Other Equitable Relief (the “Motion to Amend,” Doc. 20) seeking to amend his Complaint to add alleged constitutional violations. The Commissioner has not filed a response to the Motion to Amend.

On April 3, 2020, Plaintiff filed the instant Motion for Notice in which Plaintiff argues that the Motion to Dismiss should be denied and the Commissioner directed to respond to Plaintiff’s proposed amended complaint. Doc. 21, p. 1.

As noted, the Commissioner has not responded to Plaintiff’s Motion to Amend. Likewise, while Plaintiff has filed his Motion to Amend, Plaintiff has not filed a response to the Commissioner’s Motion to Dismiss.

Under these circumstances, the undersigned finds that responses to the Motion to Dismiss and the Motion to Amend, respectively, are needed for these matters to be considered fully.

Further, the Court **ADVISES** Plaintiff, who is appearing *pro se*, that Defendant has filed a Motion to Dismiss which asks the Court to dismiss Plaintiff’s Complaint. Plaintiff is advised to review the Motion to Dismiss and supporting brief (Docs. 16 & 17) carefully. Plaintiff is further advised that if he does not submit a response to the Motion to Dismiss by the deadline stated below, the Court may proceed to consider the Motion to Dismiss without hearing from him.

IT IS THEREFORE ORDERED THAT:

1. Within twenty-one (21) days of this Order:
 - a. The Commissioner shall file a response to Plaintiff's Motion to Amend (Doc. 20) and
 - b. Plaintiff shall file a response to the Commissioner's Motion to Dismiss (Doc. 16).
2. These responses shall comply with the Local Rules of this district, including as to form and length.
3. Plaintiff's Motion for Judicial Notice of Failure to Answer (Doc. 21) is **DENIED**.

Signed: April 7, 2020



W. Carleton Metcalf
United States Magistrate Judge

